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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/763,250	02/15/2001	Craig H Randall	HRCMP002USNP	4576

21121 7590 05/27/2003
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EXAMINER

FRECH, KARL D

ART UNIT	PAPER NUMBER
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2876

DATE MAILED: 05/27/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/763,250

Applicant(s)

RANDALL, CRAIG H

Examiner

Karl D Frech

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-127 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 99-109 and 114 is/are allowed.
- 6) ☒ Claim(s) 27-33, 49-79, 85, 87, 110, 113 and 115-127 is/are rejected.
- 7) ☒ Claim(s) 1-26, 34-48, 80, 86, 88, 90, 94, 111 and 112 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 2876

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. Claims 1-26,34-48 are objected to because of the following informalities: claim 1 recites a first segment of 31 parts. Claims 2,3,4 label this segment "March and August", "August and January" and "March, August and January" respectively. Claims 2,3 and 4 are not dependent upon each other. Therefore, the month of January in claim 2, the month of March in claim 3 are nowhere represented in the claims. Also in February is only represented in claim 5 from which no other claim depends. In short, not all months are represented within the calender as claimed. Appropriate correction is required.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 27-33,49-78,113 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding the independent claims, claim 27 line 10, claim 50 line 22, claim 113 line 24 recite the conjunction "or" connecting two alternate embodiments of the "second" circular disk (or base in regard to claim 27). The choice provided of either one or the other of the two alternate embodiments leaves the claim vague and indefinite as the claim fails to positively set forth that which is considered to be the invention.

Art Unit: 2876

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 79,85,87,110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivey 4,751,373 in view of Freedom 4,625,099. Ivey discloses a base 10 with equiangular marks, a first disk 20 and a second disk 24 with equiangular marks. Ivey does not disclose the marks on the first and second disk are related to a menstrual cycle. Freedom discloses as seen in figure 1, a menstrual/fertility disk calculator with marks on the rotating disk related to a menstrual cycle. It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the menstrual cycle marks of Freedom in conjunction with the Time calculator of Ivey. This would allow the user to adjust the calculator to appropriately indicate the actual day of the year, month and week of the users cycle.

7. Claims 115-127 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ivey 4,751,373, Freedom 4,625,099 and Thompson 5,496,070. Ivey and Freedom disclose that which is seen above. Freedom further discloses in column 6 lines 17+ that the invention may be made in a slide rule type fashion. Slide rules have multiple lineally related sliding portions. Further Thompson shows a lineally related pregnancy calculator with markings for months, days and weeks. It would have been obvious to a person of ordinary skill in the art at the time the

Art Unit: 2876

invention was made to use a "slide rule" configuration as a matter of design. The slide rule offers an alternate arrangement which may make it easier to show a "length" of pregnancy.

8. Claims 80,86,88,90,94,111 and 112 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 99-109,114 are allowable over the prior art of record.

10. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record fails to teach or fairly suggest, in conjunction with all the other claimed limitations, regarding claims 80,94,111 and 112 the physiological phase or fertility tests; regarding claim 86, the locking means; regarding claim 90, the mask; regarding claim 88 the 366 equal parts; regarding claims 99,114, the moon phases.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl Frech whose telephone number is (703) 305-3491. The examiner's supervisor is Michael Lee whose telephone number is (703)305-3503. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center receptionist whose telephone number is (703)308-0956. The Tech Center fax number is (703) 308-7722.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [karl.frech@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C.

Art Unit: 2876

122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

A handwritten signature in black ink, appearing to read 'Karl D. Frech', written in a cursive style.

Karl D. Frech
Primary Examiner, AU 2876
May 19, 2003